

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

STEPHEN BOTKIN)	
Claimant)	
VS.)	
)	Docket No. 183,064
IBP, INC.)	
Respondent)	
Self-Insured)	
AND)	
)	
WORKERS COMPENSATION FUND)	

ORDER

The Workers Compensation Fund (Fund) requested Appeals Board review of the November 24, 1994, Award entered by Administrative Law Judge Floyd V. Palmer. Appeals Board Member Gary Korte recused himself from these proceedings and in his place Stacy Parkinson was appointed Appeals Board Member Pro Tem. The Appeals Board heard oral argument on May 19, 1998.

APPEARANCES

Claimant appeared by his attorney, Diane F. Barger of Wichita, Kansas. Respondent appeared by its attorney, Tina M. Sabag of Dakota City, Nebraska. The Fund appeared by its attorney, Derek R. Chappell of Ottawa, Kansas.

RECORD AND STIPULATIONS

The Appeals Board considered the record and adopted the stipulations listed in the Award.

ISSUES

Claimant has sustained several injuries to his left knee. His most recent injury, which is the subject of this claim, occurred at work on August 26, 1993. Respondent settled the claim based upon a 40 percent permanent partial disability to the leg. In the Award, Judge Palmer found the Fund 100 percent liable for the cost of the claim. But further found that the Fund should not bear any of the cost for the permanent partial disability benefits paid by respondent for the reason that none of claimant's impairment was attributable to the August 26, 1993 accident. The uncontroverted testimony was to the effect that all of claimant's permanent impairment preexisted that accident. The Fund's liability, therefore, was limited to the medical treatment expenses and costs.

The Fund appealed raising the following issues:

- (1) What is the liability of the Kansas Workers Compensation Fund, if any?
- (2) Should the Fund be awarded attorney's fees pursuant to K.S.A. 44-556a(f)?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of counsel, the Appeals Board finds as follows:

The Award entered by the Administrative Law Judge should be affirmed. The Appeals Board agrees with the ALJ's analysis of the evidence and statement of the applicable law as set forth in the Award. The Appeals Board concludes the ALJ's Award sets out findings of fact and conclusions of law that are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this Order. Therefore, the Appeals Board adopts the ALJ's findings and conclusions as its own as if specifically set forth herein.

In addition, the Appeals Board finds that the examination by Dr. Dale E. Darnell was for the purpose of litigation and should not be ordered paid as medical treatment. The Fund is also not responsible for the expense of medical treatment provided before the August 26, 1993 accident date. The Fund should bear the expense of its own attorney's fees.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the November 24, 1997, Award entered by Administrative Law Judge Floyd V. Palmer should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of September 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Diane F. Barger, Wichita, KS
Tina M. Sabag, Dakota City, NE
Derek R. Chappell, Ottawa, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director